

FMC investigation on Canadian Ballast Water regulations

June 06, 2024

In March of 2020, the U.S. Lake Carriers Association (LCA) strongly criticized pending Canadian regulations regarding ballast water management, labeling them as unjust and harmful to U.S. businesses. The legislation begins to apply on September 8, 2024. Now, in response to the concerns from the LCA, the Federal Maritime Commission (FMC) has initiated an investigation into proposed Canadian legislation and potential unfavourable conditions facing American carriers operating within the Great Lakes.

The Canadian regulations

The [regulations apply](#) to all vessels operating in Canadian waters, including domestic and foreign vessels, and establish standards for ballast water treatment systems to ensure they meet certain effectiveness criteria in removing or neutralizing aquatic invasive species. The regulations require that the systems treat ballast water at uptake and before discharge at Canadian Great Lake ports.

LCA's concerns

The LCA has expressed concerns that the regulations would impose significant operational burdens on American carriers by requiring them to install new ballast water management systems. The LCA argues that doing so has minimal environmental benefits for Canada, because American vessels uptake but do not discharge ballast water in Canadian waters. The LCA has claimed that the Canadian regulations create a higher financial burden for their members, particularly noting that "Transport Canada is forcing U.S.-flagged vessels operators engaged in foreign trade to Canada to walk away from that market".

The Canadian government's position

In its response to the LCA's petition, the Canadian government has outlined that the general purpose of the proposed Canadian legislation is to mitigate the environmental and economic impacts of invasive species by regulating the management of ballast water discharge from ships operating in Canadian waters.

The government highlights that the regulations are still being discussed with American regulatory agencies, and so the LCA's petition and the FMC's decision are premature.

In response to the LCA's arguments, the government noted that:

- The regulations do not discriminate as they apply the same standard to Canadian and American ships conducting business in Canadian waters of the Great Lakes;
- Fairness, as argued by the LCA, is not defined by costs of compliance but by equal application;
- The LCA wrongly focuses on ballast water to be discharged. However, the applicable international convention, to which Canada is a signatory, also deals with the uptake of ballast water; and
- Foregoing treatment of ballast water for invasive species at uptake would result in a risk that invasive species could be spread downstream.

Navigating next steps

The investigation will focus on whether the conditions created by the Canadian regulations adversely affect American carriers operating in Canadian waters in a manner that does not exist for Canadian carriers operating in American waters. Interested parties, including the Government of Canada, U.S. carriers, and Canadian carriers, are invited to submit comments and information relevant to the investigation.¹

Footnote

¹ The FMC Requests comments by email to: secretary@fmc.gov. For comments, include in the subject line: "Docket No. 20-10, Comments on Conditions Created by Canadian Ballast Water Regulations in the U.S./Canada Great Lakes Trade." Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

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